

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

The Estate of Ana Mendieta
And The Estate of Ana
Mendieta Collection LLC

Plaintiff(s)

v.

Amazon.com Service, Inc.
Dba "Amazon Studios" and
Amazon.com, Inc.

Defendant(s)

No 2:18-cv-01426

FIRST AMENDED COMPLAINT
COPYRIGHT INFRINGEMENT

JURY TRIAL REQUESTED

Plaintiffs the Estate of Ana Mendieta and the Estate of Ana Mendieta Collection LLC, by and through their undersigned attorney Barbara T Hoffman, the Hoffman Law Firm, alleges as follows:

I. NATURE OF THE ACTION

1. Plaintiffs the Estate of Ana Mendieta and the Estate of Ana Mendieta Collection LLC, (herein after "Plaintiffs") brings this action to recover damages resulting from copyright infringements by defendant Amazon.com Services, Inc. dba "Amazon Studios" and

AM. COMPLAINT – PAGE 1

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Amazon.com, Inc., (hereinafter collectively "Defendant"), of original works of art by Ana Mendieta ("Mendieta Images") created by her, and to enjoin future infringements by Defendant of the Mendieta Images. Defendant Amazon Studios has reproduced, displayed, distributed and otherwise displayed the Mendieta Images on the Amazon Studios website and induced others to use the Mendieta Images without authorization. Defendant engaged in the unauthorized transmittal, display, reproduction, and creation of derivative works, of two Mendieta Images ("Infringing Images") in a trailer created by Defendant to advertise and market the film (the "Trailer") by Luca Guadagnino (the "Film"). Such Infringing Images were made available for distribution and reproduction, and display by the Defendant.

2. This unauthorized transmission, display, reproduction, and creation of derivative works of the Mendieta Images in the Trailer without authorization constitutes violation of Plaintiffs' exclusive rights under 17 U.S.C. §106.

3. The images below are the two Mendieta Images, *Rape Scene* and *Untitled: Silueta Series, Mexico*.

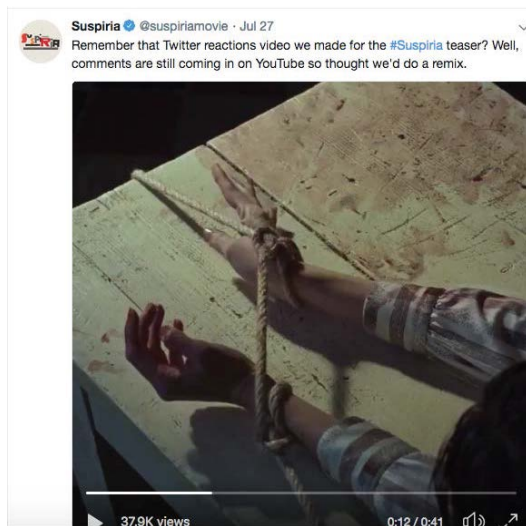


Rape Scene, 1973



Untitled: Silueta Series, Mexico, 1976

The images below are the Infringing Images in the Trailer.



II. PARTIES

4. The Estate of Ana Mendieta is the estate of the renowned Cuban-American artist born 1948 who died tragically in 1985. The Estate of Ana Mendieta Collection, LLC is managed by the artist's sister, Raquelín Mendieta, and her niece, Raquel Cecelia Mendieta, in close cooperation with Galerie Lelong & Co., New York and Paris. The Estate overseas and implements a stringent rights and reproductions policy. All requests to reproduce images of her

1 work are submitted to the Estate for approval. In general, image permissions are only granted for
2 art historical contexts such as academic journal articles and informational articles directly related
3 to the artist's work and practice. Permissions are not granted for commercial reproductions such
4 as on merchandise, and recreations of her artworks in film and print are never permitted. The
5 Estate of Ana Mendieta Collection, LLC always retains the copyright and intellectual property
6 rights.

7 5. Upon information and belief, Amazon.com Services, Inc., doing business as
8 Amazon Studios is a wholly owned subsidiary of Amazon.com, Inc., that specializes in
9 developing television series, and distributing and producing films. Amazon.com, Inc., doing
10 business as Amazon, is an American electronic commerce and cloud computing company based
11 in Seattle, Washington.

12 13 **III. JURISDICTION AND VENUE**

14 6. This Court has jurisdiction over this action, pursuant to 28 U.S.C. §1331 and
15 1338(a), as this action involves claims brought under federal law, the Copyright Act, 17 U.S.C.
16 §101, *et seq.*

17 7. Defendant is subject to personal jurisdiction in this Court because the principal
18 place of business of Amazon.com, Inc. is located in Seattle, Washington.

19 8. Venue is also proper in the Western District of Washington, pursuant to 28 U.S.C.
20 §139 (b)(2) - (3), because, upon information and belief, a part of the events or omissions giving
21 rise to the claims asserted in this Complaint occurred in the District and the legal address
22 provided for Amazon Studios is Seattle, Washington. Upon information and belief the Infringing
23 Images were distributed worldwide by Amazon Studios and its Italian co-producers, licensees,

1 and third parties under its control, or induced by it to reproduce, distribute, and display the
2 images. Intellectual Property matters are handled by Defendant in Seattle, Washington.

3 **IV. FACTUAL BACKGROUND**

4 9. Ana Mendieta was an iconic Cuban American performance artist, sculptor, painter
5 and visual artist best known for her earth body work since the late 1970's ("Mendieta");
6 Mendieta's untimely death in 1985 has contributed to her legacy as one of the leading artists of
7 her time. On or about July 7, 2018, the executor of the Estate and the Estate's copyright agent,
8 the Galerie Lelong, discovered the unauthorized reproduction/derivate images of two of her
9 iconic images, *Untitled: Silueta Series, Mexico*, 1976 and *Rape Scene*, 1973, in a trailer for the
10 Amazon Studios film, "Suspiria."

11 10. On July 16, the Estate wrote a cease and desist letter to Amazon.com's copyright
12 agent at the address below.

13 Copyright Agent

14 Amazon.com Legal Department

15 410 Terry Avenue N

16 Seattle, WA 98109-5210

17 (206) 266-4064

18 copyright@amazon.com

19 11. The letter enclosed two copies of the Mendieta Images, *Rape Scene* and *Untitled:*
20 *Silueta Series, Mexico*, attached hereto as Exhibit A informed the agent that the Estate had
21 applied for Copyright Registration for the Mendieta Images on July 12, 2018, and requested that
22 Amazon take down the Trailer with the Infringing Images.

1 12. Upon information and belief, Suspiria is a 2018 Italian-American horror film inter
2 alia co-produced and distributed by Defendant and a group in Italy ("Italian Copyright Holders")
3 directed by Luca Guadagnino and written by David Kajganich, based on Dario Argento's 1977
4 film. The plot focuses on a young American dancer who enrolls at a prestigious dance academy
5 plagued by unusual occurrences.

6 13. Dream sequences in the Film and the Trailer were created and filmed with the
7 Infringing Images in Varese, Italy and Berlin, Germany.

8 14. Suspiria premiered at the 75th Venice International Film Festival on September 1,
9 2018. It is scheduled for a limited release by Amazon Studios in Los Angeles and New York on
10 October 26, 2018, before opening wide on November 2, 2018. The Film has a budget of twenty
11 (20) million dollars.

12 15. On July 25, 2018, a lawyer from Los Angeles representing Amazon Studios
13 contacted me. In a follow up letter that same day, the Estate's position was that the Trailer
14 infringed copyright, as set forth in the letter on July 16, 2018, and that the Estate did not want the
15 Mendieta Images to be used in Suspiria, the Film or Trailer.

16 16. The Estate requested the Defendant to takedown the Trailer immediately.

17 17. Several web sites commented on references to Luca Guadgnino's uses of the
18 Mendieta Images in the Trailer. The Defendant on its website, Twitter, YouTube channel, and
19 other accounts, continued to use the Trailer to advertise the Film and to authorize others to use
20 the Trailer.

21 18. The Defendant refused to contact third party websites for a take down.

22 19. Plaintiffs' counsel contacted the Hollywood Reporter, the New York Times, and
23 YouTube for take downs which were successful.

1 20. Not until August 23, 2018 did Defendant replace the Trailer with a new trailer
2 without the two Infringing Images.

3 21. On or about August 28, 2018, the Trailer was available on the URL's attached
4 hereto as Exhibit B.

5 22. Following the Venice Film Festival screening on September 1, 2018, Defendant
6 made available the Film to the Plaintiff. The Galerie Lelong agent reviewed the Film. The two
7 Mendieta Images had been removed.

8 23. Eight (8) images of varying degrees of similarity were identified as recreations
9 and/or derivate of Mendieta Images in the Film ("Infringing Images").

10 24. The Galerie Lelong identified that the catalogue "She Got Love," the catalogue
11 for the exhibition Curated by Beatrice Merz and Olga Gambari in Turin, Italy, published in 2013
12 by Museo d'Arte Contemporanea, three years prior to the principal photography in Italy in 2016,
13 included the two Mendieta Images from the Trailer as well as the eight additional Mendieta
14 Images in the Film.

15 25. Application for U.S. registration was made for the eight Mendieta Images, which
16 are alleged to be Infringing Images in the Film, on September 27, 2018. Copies of the images,
17 applications, and receipts are attached as Exhibit C.

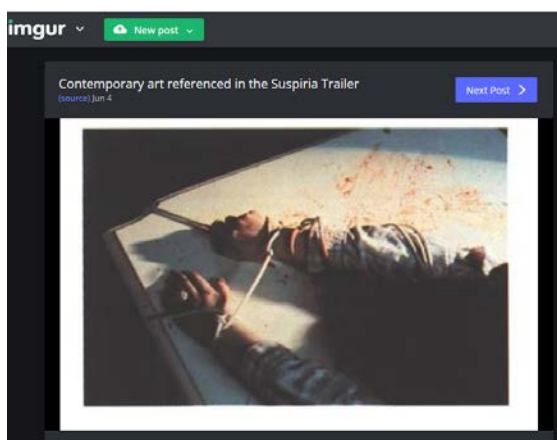
18 26. Amazon Studio's outside counsel has refused to issue take down notices to third
19 parties or licenses in Italy.

20 27. Italian counsel has only achieved take downs for two YouTube Trailers.

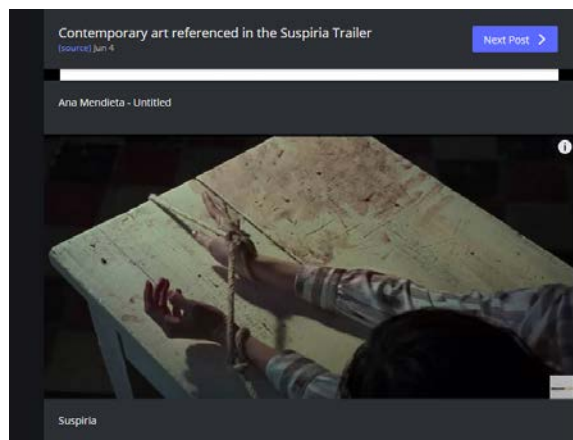
21 28. Attached as Exhibit D are the Italian trailers which remain on web sites in Italy.

29. At the time of filing this complaint, Amazon Studios has affirmatively authorized the Trailer with the Infringing Images, attached hereto as Exhibit E response to a take down sent by Italian counsel.

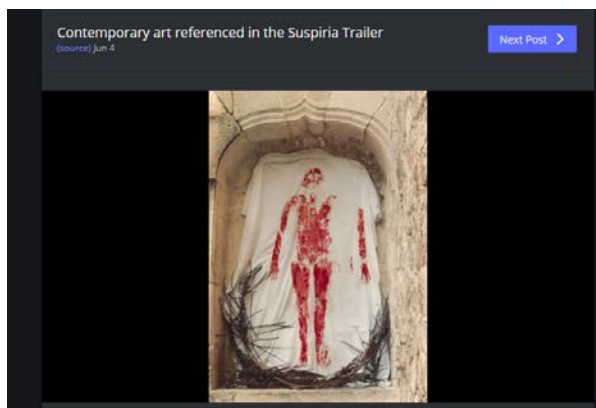
30. Blogs have commented on the use by the director, Luca Guadagnino, of not only Mendieta's works but that of other female artists including Claude Cahun (1894-1954) and Gina Pane (1939-1990). Below are images from a blog post on <https://imgur.com/r/movies/h1ULbR1> from June 4, 2018.



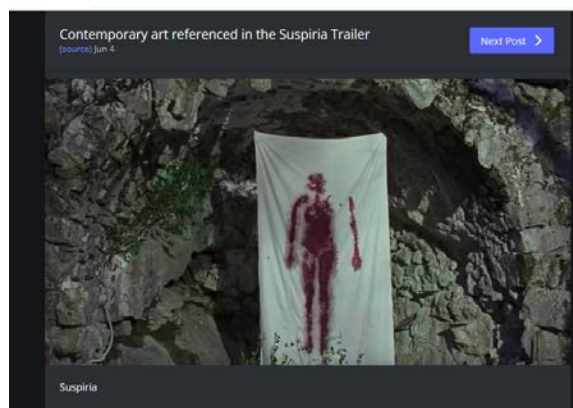
Rape Scene, Ana Mendieta



Suspiria



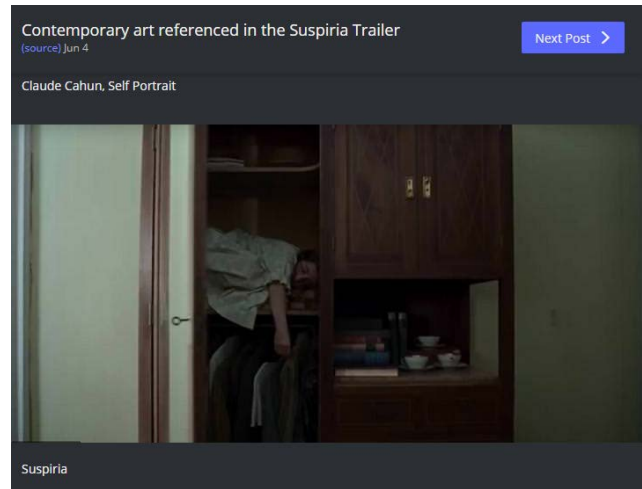
Untitled Silueta Series, Mexico, Ana Mendieta



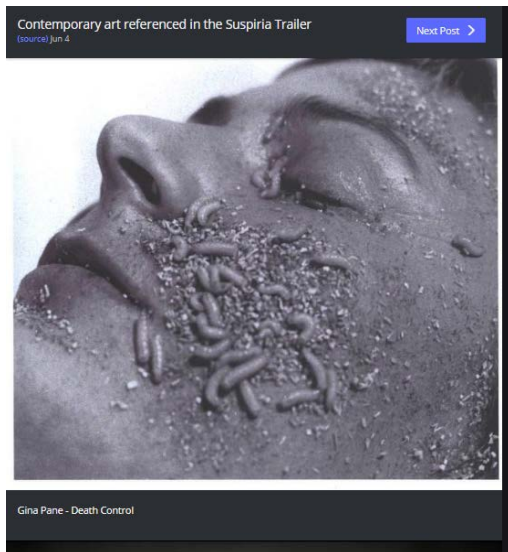
Suspiria



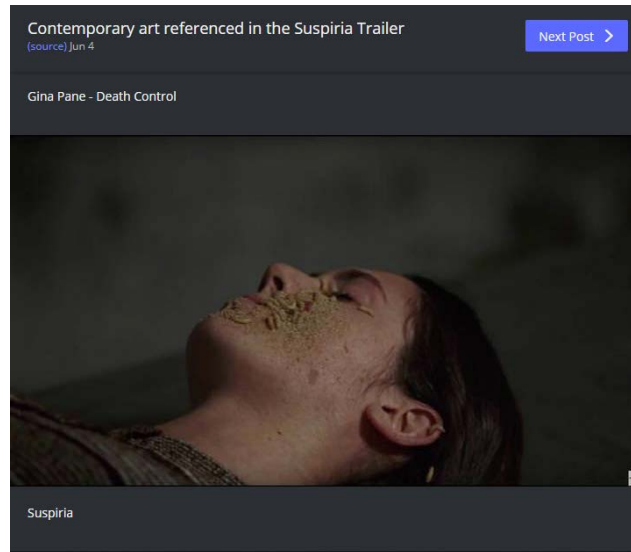
Self Portrait, Claude Cahun



Suspiria



Death Control, Gina Pane



Suspiria

31. Social media and writers continued to identify the Trailer images with the two Mendieta Images. See Exhibit F.

**V. FIRST CAUSE OF ACTION FOR DIRECT
COPYRIGHT INFRINGEMENT**

32. Plaintiff incorporates by reference paragraph 1 to 30 above as set forth herein.

33. The Plaintiffs at all relevant times have been, the owner of the copyright of the Mendieta Images.

34. Each Mendieta Image is copyrightable subject matter under 17 U.S.C. §102 (a)(5)

35. Plaintiffs have complied in all respects with the provisions of the Copyright Act and all regulations thereunder.

36. Plaintiff(s) applied for copyright registration for the Mendieta Images of *Rape Scene* and *Untitled: Silueta Series, Mexico* on July 12, 2018.

37. On or about September 27, 2018, the Plaintiffs filed for the applications for the registration of the eight images found in the Film.

38. As a direct and proximate result of the copyright infringement detailed herein, the Plaintiffs have been and continues to be damaged in an amount unknown at present and to be determined at trial. Defendant has garnered and/or will garner infringing profits in an amount presently unknown, which profits should be disgorged to Plaintiffs.

39. Plaintiff has suffered and will continue to suffer substantial and irreparable damage to her business reputation and goodwill as a result of Defendant's infringement. In addition to its actual damages, Plaintiffs are entitled to an award of any profits made by Defendant from their wrongful acts pursuant to 17 U.S.C. §504.

1 40. Plaintiffs have no adequate remedy at law to protect her rights in the Mendieta
2 Images and to prevent Defendant(s) from continuing to infringe the Mendieta Images and to
3 injure Plaintiffs. Plaintiffs have suffered and continue to suffer irreparable injury from the
4 Defendant's conduct as alleged.

5 41. As a direct and proximate result of the copyright infringements detailed herein,
6 Plaintiff is entitled to preliminary and permanent injunctive relief enjoining and restraining
7 Defendant from infringing the copyright.

8 42. Plaintiffs have no adequate remedy at law for Defendant's wrongful conduct in
9 that: (1) the subject images are unique and valuable properties; (2) Defendants' infringements
10 interfere with Plaintiffs' goodwill and customer relations; and (3) Defendant's infringements and
11 damage resulting therefrom are continuing Plaintiffs are entitled therefore to injunctive relief
12 pursuant to 17 U.S.C. § 502, and an order impounding all infringing materials pursuant to 17
13 U.S.C. § 503.

14 **VI. SECOND CAUSE OF ACTION**

15 **CONTRIBUTORY COPYRIGHT INFRINGEMENT**

16 43. Plaintiff incorporates by reference paragraph 1 to 30 above as set forth herein.

17 44. Defendant disseminated the Infringing Images in the Trailer partners, licensees,
18 and third parties. Defendant has encouraged, assisted, induced, caused, and/or materially
19 contributed to a vast number of actual or imminent copyright infringements of the Infringing
20 Images in violation of 17 U.S.C. §§ 106 and §501.

21 45. Defendant has promoted and promotes infringement through the distribution,
22 display, and transmission of the Trailer on the internet worldwide, on social media, in marketing,
23 and advertising materials and has failed to inform third parties and licensees with whom they

1 have license agreements that their display, transmission and reproduction of the Trailer
2 constitutes copyright infringement. To the contrary, Defendant has authorized the continued
3 infringements to the present, which infringements are worldwide.

4 46. Defendant knows or has reason to know that Plaintiffs own the copyright in the
5 Infringing Images yet, upon information and belief, have from its executive offices in Los
6 Angeles and Seattle, authorized the continued infringement in the Trailer..

7 47. The infringements of the Mendieta Images that Defendant has encouraged,
8 assisted, induced, caused and/or materially contributed to through the conduct described above is
9 without Plaintiffs' consent and not otherwise permissible under the Copyright Act.

10 48. The foregoing acts of infringement by Defendant have been willful, intentional,
11 purposeful, and with indifference to Plaintiffs' rights under the Copyright Act.

12 49. Plaintiffs are entitled to recover from Defendant the damages, including
13 attorneys' fees, it has sustained and will sustain, and any gains, profits and advantages obtained
14 by Defendant as a result of their acts of infringement alleged above. At present, the amount of
15 such damages, gains, profits and advantages cannot be fully ascertained by Plaintiffs, but will be
16 established according to proof at trial.

17 50. Defendant has induced and promoted third parties' infringement of Plaintiffs'
18 copyright.

19 51. Defendant is liable for the acts of infringement that result from the third parties'
20 uses of the Infringing Images.

21 **VII. THIRD CAUSE OF ACTION**

22 **VICARIOUS COPYRIGHT INFRINGEMENT**

52. Plaintiffs repeat and re-allege the allegations of paragraph 1 through paragraph 48 as if fully set forth herein.

53. At all times material hereto, Defendant derived a direct financial benefit from the distribution of the Infringing Images and has failed to exercise its ability to supervise its licensees to inform them of their infringing activities and request that such licensees cease and desist from such infringing activities.

54. Upon information and belief, Defendant has derived and continues to derive direct financial benefit from a variety of sources as a result of the infringement of the Mendieta Images.

55. Defendant's actions alleged herein constitute vicarious copyright infringement in violation of the Copyright Act, 17 U.S.C. §§101 *et seq.*

56. The conduct of Defendant is intentional and calculated to injure the Plaintiffs.

57. As a result of the copyright infringements described above, Plaintiffs are entitled to relief including but not limited to, injunctive relief, and actual damages for the activities of Third Party Infringers.

VIII. PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully requests judgment as follows:

1. That the Court enter a judgment against Defendant finding that the reproduction, creation of derivative works, transmission, and display by the Defendant of the Infringing Images of the Mendieta Images have infringed Plaintiffs' copyright and;

2. That the Court enter an order, pursuant to 17 U.S.C. § 502 enjoining and restraining Defendant, and any persons or entities controlled directly or indirectly by Defendant, from engaging in the following conduct:

- a. Reproducing, distributing, displaying, creating derivative works, or making any other infringing uses of the Mendieta Images and the Infringing Images
- b. Assisting, aiding or abetting any other person or entity in engaging or performing any activities infringing the Mendieta Images;

3. That the Court enter an order, pursuant to 17 U.S.C. §504 (b), declaring that the Defendant hold in trust, as constructive trustees for the benefit of the Plaintiffs, all profits received by Defendant's revenue from, the transmission, distribution, and display of the Infringing Images;

4. That the Court order Defendant to pay damages to the Plaintiffs as follows:

- a. Actual damages suffered by Plaintiffs as a result of Defendant's infringements, including lost profits as a result of lost business from third party licenses of Amazon Studios and potential third party licenses;
- b. All profits of Defendant that are attributable to those infringements of the Mendieta Images, pursuant to 17 U.S.C. §504 (b); and
- c. For an award of statutory damages under DMCA 17 U.S.C. §1203 (c)(3)(B) for each violation of the DMCA 17 U.S.C. §1202(a) by Amazon Studios, its assignees and licensees.

5. That the Court order prejudgment interest on the amount of any awards to Plaintiff; and

6. That the Court grants to Plaintiffs such other and additional relief as is just and proper.

DATED this 27th day of September 2018

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